

FILED

APR 26 2013

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *CSN* DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CARLOS BRAVO-AVENDANDO

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

) Civ. No. 12-1227

) Cr. No. 11-4767

) **ORDER**

On May 12, 2012, Petitioner Carlos Bravo-Avendando ("Mr. Bravo"), filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 ("Motion"). Mr. Bravo states that he signed a "deal" for 12-18 months under the guidelines, but received a sentence of 22 months and 3 years supervised release instead. This is Mr. Bravo's only claim for relief. For the reasons stated below, Mr. Bravo's Motion is **DENIED**.

First, Mr. Bravo pled guilty, pursuant to a written plea agreement, to one count of illegal Deported Alien Found in the United States, in violation of 8 U.S.C. § 1326(a) and (b). In the written plea agreement, Mr. Bravo explicitly waived his right to appeal and/or collaterally attack his conviction or sentence. The Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See, United States v. Baramdyka*, 95 F.3d 840, 843 (9th Cir. 1996),


1 *cert. denied*, 117 S.Ct. 1282 (1997). Since Mr. Bravo expressly waived his statutory right to appeal
2 or collaterally attack his sentence in his plea agreement, Mr. Bravo is now precluded from
3 challenging that sentence pursuant to 28 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d
4 1012, 1014 (9th Cir. 1993) (holding that a knowing and voluntary waiver of a statutory right is
5 enforceable).

6 Second, Mr. Bravo's written plea agreement did not specify a sentencing guideline range of
7 12-18 months as Mr. Bravo claims. In fact, section IX of the plea agreement specifically states
8 "that the sentence is within the sole discretion of the sentencing judge" and that "any estimate of
9 the probable sentence by defense counsel is a prediction, not a promise, and is **not binding on the**
10 **Court.** (Emphasis in original.) Additionally, section X, subsection D, states that the "parties have
11 no agreement to defendant's Criminal History Category." Without a definitive Criminal History
12 Category, it is not possible to calculate the appropriate guideline range. Hence, Mr. Bravo's written
13 plea agreement did not specify a guideline range of 12-18 months as he claims. Accordingly,

14 **IT IS ORDERED** that Mr. Bravo's Motion to Vacate, Set Aside or Correct Sentence is
15 **DENIED.**

16 **IT IS SO ORDERED.**

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18
19 4/26/13
20 date


21 GORDON THOMPSON, JR.
22 United States District Judge
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cc: All parties and Probation Department